
CHAPTER: Compliance Laws and Regulations

SECTION: Interest on Deposits

Section 420

Introduction

In 1993, the OTS made numerous changes to its regulations pursuant to the adoption of Regulation DD implementing the Truth in Savings Act, and the actions taken under the Regulatory Review Program. To reduce regulatory burden, the OTS reviewed its regulations to identify those provisions which were unnecessary and onerous. Sections pertaining to premiums, give-aways, advertising, and disclosures on fixed term accounts have either been removed or amended, as reflected in the revised narrative and examination procedures for this section of the handbook.

The effective annual yield formula previously used to determine the amount of interest paid on deposits has been replaced by the Annual Percentage Yield calculation contained in Regulation DD. In addition, Regulation DD restricts the method by which institutions determine the account balance for interest calculation purposes. Refer to section 365 of this handbook for discussion on Regulation DD.

While many of the deposit restrictions, such as mandatory early withdrawal penalties, are not included in the OTS's regulations, it should be noted that associations under the OTS's jurisdiction are subject to the FRB reserve requirements set forth in Regulation D. In this regard for example, the presence and amount of early withdrawal penalties will affect the classification of deposits for reserve purposes.

Note: Compliance with Regulation D is currently covered during safety and soundness examinations. For examination procedures, see Thrift Activities Handbook, Section 561.

Requirements

Accounts

Federally chartered savings associations may issue demand deposit accounts and savings accounts for indefinite or fixed terms. Savings associations are also authorized to issue Money Market Deposit

Accounts (MMDAs) and negotiable order of withdrawal accounts (NOWs) by 12 U.S.C. 1464(b)(1) and 12 U.S.C. 1832, respectively. There are no interest-rate ceilings on any accounts offered by savings associations and under OTS regulations there are no requirements for early withdrawal penalties. (The OTS believes, however, that early withdrawal penalties are useful in maintaining stability in all classes of Certificate of Deposits (CDs).)

Following is a list of the authorized types of accounts and the requirements associated with each:

1. **Regular Savings Account (Passbook Account)** — Section 561.42 provides that a savings account is any withdrawable account, except a demand account, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account. There are essentially no specific limitations on these accounts imposed by OTS, with the exception that the savings association must reserve the right to require at least seven days' notice prior to withdrawal. These accounts must, however, meet certain requirements to qualify for lower reserve requirements as a savings account under Regulation D.
2. **Fixed-term Account (Certificate Account)** — Pursuant to §563.7, a certificate account must have a term of at least seven days. (Note: Accounts with fixed terms of less than seven days would be considered a demand deposit.)

An association may prohibit withdrawal of any portion of a certificate account prior to maturity. An association may not, however, restrict withdrawal or impose an early withdrawal penalty under the following circumstances:

- After the death of an account owner, if the withdrawal is requested by any other owner of the account or by the authorized representative of the decedent's estate; or
- After an account owner is determined by a court or other administrative body of

proper jurisdiction to be legally incompetent, if the account was issued before the date of such determination and not extended or renewed after that date.

3. **Money Market Deposit Account (MMDA)** — These accounts can be made available to any depositor, including individuals, corporations, government entities, and not-for-profit organizations. The association must reserve the right to require seven days' notice prior to withdrawal.

Pursuant to §561.28(a)(2), depositors are restricted to no more than six transfers per calendar month or statement cycle of at least four weeks by means of preauthorized, automatic, telephonic, or data transmission agreement, order, or instruction to another account of the depositor at the same insured association, to the association itself, or to a third party. No more than three of these transfers may be by check, draft, debit card, or similar order made by the depositor and payable to third parties. The depositors may, however, make unlimited transfers for the purpose of repaying loans and associated expenses at the association, for interaccount transfers in person or at an ATM from the MMDA account to accounts of the same account holder at the same association, and for cash or check withdrawals made in person, by mail, messenger, ATM, or telephone (via check mailed to the depositor).

In order to ensure that these requirements are met the association must either prevent transfers in excess of the limitations or adopt procedures to monitor transfers after-the-fact. In the second case, the association must take necessary steps to ensure that the excessive transfers do not continue. In the event that a depositor continues to make transfers in excess of the limitations subsequent to being contacted by the association in that regard, the association must either restrict access to the account or transfer the funds into another account the depositor is eligible to maintain.

4. **Negotiable Order of Withdrawal Account (NOW)** — NOW accounts may only be held by one or more individuals, government enti-

ties depositing public funds, and not-for-profit organizations operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes. These eligible "not for profit" organizations are described in §§501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code. The Internal Revenue Service (IRS) has ruled that a non-profit housing organization created to aid low and moderate income families may qualify for a tax exemption under §501(c)(3), and pursuant to this ruling the IRS has deemed many public housing authorities eligible for such exemption. Sole proprietorships and unincorporated businesses owned by a husband and wife are considered to be for the benefit of "one or more individuals" for purposes of eligibility for NOW accounts.

The association must reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account. A depository institution is authorized by 12 USC 1832 to permit the eligible owner, as described above, to make withdrawals from these accounts by negotiable or transferable instruments for the purpose of making transfers to third parties. Any depository institution which violates §1832 could be subject to a fine of \$1,000 for each violation.

5. **Checking Accounts (Demand Deposit Accounts)** — Federal savings associations are authorized to issue demand deposits accounts by §§545.11 and 545.12, but restricted from paying interest on such deposits by §545.12 (b). They may be issued to any person.

Section 561.16 defines the term "demand accounts" to mean non-interest bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and which are permitted to be issued by statute, regulation or otherwise and are payable on demand as provided in §563.6(b).

Finders' and Brokers' Fees

As provided in §561.16(b), finders' and brokers' fees paid by savings associations for demand de-

posits will not be considered to be a payment of interest on the account if:

- the fee is a bonus in cash or merchandise to the insured association's employees for participation in an account drive, contest or other incentive plan where the bonus is based on the total amount of deposits solicited; or
- if the fee is paid to a bona fide broker, which is considered to be one who is principally engaged in the business of brokering deposits, securities, or money market instruments, there is a written agreement between the broker and the association, and an officer of the broker gives written certification that no portion of the fee paid is directly or indirectly passed on to the depositor.

Lotteries

Section 410 of the National Housing Act of 1934, 12 USC 1730c, prohibits SAIF insured institutions from dealing in lottery tickets. The Home Owner's Loan Act, 12 USC 1463(4)(e), prohibits federal savings associations from dealing in lottery tickets. These statutes define "lottery" to include any arrangement under which three or more persons (participants) advance money or credit to another in exchange for the possibility or expectation that one or more but not all participants (winners) will receive by reason of their advances more than the amounts they have advanced; the identity of the winners is determined by any means which includes a random selection; a game, race or contest. . . . The term "lottery ticket" includes any right, privilege, or possibility . . . of becoming a winner in a lottery.

Advertising

Interest on Deposits

The rules governing the advertising of interest on deposits are set forth in §230.8 of Regulation DD. Refer to section 365 of this handbook for guidance.

Examination Objectives

To determine whether the savings association is meeting all requirements for different types of accounts.

Examination Procedures

1. Determine if the savings association is reserving the right to require at least the minimum advance notice on its accounts in its account contracts.
2. Determine through a review of savings association policies, procedures, and practices if any early withdrawal restrictions or penalties imposed by the savings association on certificate accounts are waived under the following circumstances:
 - a. After the death of an account owner, if the withdrawal is requested by any other owner of the account or by the authorized representative of the decedent's estate; or
 - b. After an account owner is determined by a court or other administrative body of proper jurisdiction to be legally incompetent, if the account was issued before the date of such determination and not extended or renewed after that date.
3. Review the savings association's policies, procedures, and practices to determine if they adequately restrict the number of transactions allowable in MMDA accounts.
4. Determine if the savings association allows only individuals, government entities (public units), or not-for-profit organizations operated primarily for religious, philanthropic, charitable, educational, political, or similar purposes to hold NOW accounts.
5. Determine if the savings association refrains from paying interest on demand deposit accounts.
6. Determine if the payment of finders' or brokers' fees on demand deposit accounts meet

the limitations in order not to be considered interest payments.

12 USC 1832 Federal Deposit Insurance Act, NOW Accounts: Transfers from Interest Bearing Savings Accounts, Prohibition on certain activities by depository institutions

References

Laws

- 12 USC 1463(4)(e)

Home Owner’s Loan Act, Supervision of Savings Associations, Participation by savings associations in lotteries and related activities
- 12 USC 1464(b)(1)

Home Owner’s Loan Act, Federal Savings Associations Deposits and Related Powers
- 12 USC 1730c

National Housing Act of 1934, Insurance of Savings and Loan Accounts, Participation by insured institutions in lotteries and related activities

Regulations

- 12 CFR 545

Office of Thrift Supervision, Department of the Treasury, Operations Regulation
- 12 CFR 561

Office of Thrift Supervision, Department of the Treasury, Definitions Regulation
- 12 CFR 563

Office of Thrift Supervision, Department of the Treasury, Operations Regulation
- 12 CFR 230

Federal Reserve System, Regulation DD